

Union of India and Others

Vs

M. Ravi Varma and Others

and

Union of India and Others

Vs

S. Ganapathi Kini and Others

and

Union of India and Others

Vs

Suresh Kumar And Others

Civil Appeals Nos. 1845 and 1846 of 1968 and 50 of 1969

(J. M. Shelat, G. K. Mitter, I. D. Dua, H. R. Khanna JJ)

04.01.1972

JUDGMENT

KHANNA, J. -

1. Whether the criterion to determine the seniority of Ravi Varma and Ganapathi Kini respondents should be length of service in accordance with the Office Memorandum, dated June 22, 1949, issued by the Ministry of Home Affairs, as claimed by the said respondents, or whether it should be the date of confirmation, as claimed by the appellants, is the main question which arises for decision in Civil Appeals Nos. 1845 and 1846 of 1968 which have been filed by the Union of India and two others by special leave against the judgment of Mysore High Court. Similar question arises in respect of the seniority of Suresh Kumar and Tara Chand Jain, respondents in Civil Appeal No. 50 of 1969, which has been filed by the Union of India and two others on a certificate granted by the Punjab and Haryana High Court against the judgment of that Court reversing in Letters Patent Appeal the decision of the single Judge and issuing a writ in favour of those respondents. The High Court held in all the cases that the seniority of the concerned respondents should be determined on the basis of the length of service in accordance with the above mentioned Office Memorandum.

2. Before giving the facts of the three cases, it would be pertinent to refer to two Office Memoranda issued by the Ministry of Home Affairs. One of the memoranda is dated June 22, 1949. It was mentioned in this memorandum that the Government of India had under consideration the question of the fixation of seniority of displaced Government servants and temporary employees in the various grades. Employees of the Central Government who were displaced from their offices in

Pakistan, according to the memorandum, had been absorbed in office under the control of the same administrative Ministry or on nomination by the Transfer Bureau of the Ministry of Home Affairs in other offices. All those persons had been appointed, with a few exceptions, on temporary basis. The Ministry of Home Affairs accordingly conveyed the following decision :

"It has now been decided in consultation with the Federal Public Service Commission that the question of seniority in each grade should also be examined in the same context and specific rules suitable for each service prescribed in framing those instructions. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and Federal Public Service Commission and the decisions reached are incorporated in Para 8 of the 'Instructions for the initial constitution of the grade of Assistants' an extract of which is attached. It has been decided that this rule should generally be taken as the model in framing the rules of seniority for other services and in respect of persons employed in any particular grade seniority should, as a general rule be determined on the basis of the length of service in that grade irrespective of whether the latter was under the Central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has therefore been decided that 'Service in an equivalent Grade', should, generally be defined as service on a rate of pay higher than the minimum of the time-scale of the grade concerned. The seniority of persons appointed on a permanent or quasi-permanent basis before January 1, 1944 should, however not be disturbed."

3. Direction was accordingly issued by the Ministry of Home Affairs that the principles given in the Memorandum be borne in mind in determining the seniority of 'Government servants of various categories employed under the Ministry of Finance, etc.'. On December 22, 1959, another Office Memorandum was issued by the Ministry of Home Affairs on the subject of the general principles for determining seniority of various categories of persons employed in Central Services. Material part of this Memorandum was as under :

"1. The instructions contained in this Ministry's Office Memorandum No. 30/44/48 - Appts., dated June 22, 1949, were issued in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition. As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous services, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contained in the 22nd June, 1949 orders were extended to -

(i) ex-Government servants of Burma appointed to Central Services; and

(ii) the employees of former Part 'B' States taken over to the Centre as a result of Federal Financial Integration.

The instructions contained in this Ministry's Office Memorandum No. 32/10/49 - CS, dated March 31, 1950 and No. 32/49 - CS(C), dated September 20, 1952, similarly regulate the seniority of candidates with war service appointed to the Central Services.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memoranda cited above. Displaced Government servants have by and large

been absorbed in the various Central Services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of ex-employees of the Government of Burma and of Part 'B' States as well as of candidates with war service has already been determined in accordance with the instructions cited above. As the specific objects underlying the instructions cited above have been achieved, there is no longer any reason to apply those instructions in preference to the normal principles for determination of seniority. It has, therefore, been decided in consultation with the Union Public Service Commission, that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the General principles annexed hereto.

3. The instructions contained in the various Office Memoranda cited in Paragraph 1 above are hereby cancelled, except in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this Office Memorandum. The revised General principles embodied in the Annexure will not apply with retrospective effect, but will come into force with effect from the date of issue of these orders, unless a different date in respect of any particular service/grade from which these revised principles are to be adopted for purposes of determining seniority has already been or is hereafter agreed to by this Ministry."

Relevant parts of Paragraphs 2, 3 and 4 of the annexure to this Memorandum were as under :

"2. Subject to the provision of Para 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles shall retain the relative seniority already assigned to them or such seniority as may hereafter be assigned to them under the existing orders applicable to their cases and shall enblock be senior to all others in that grade.

3. Subject to the provisions of Para 4 below, permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

4. Direct Recruits. - Notwithstanding the provisions of Para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection....."

4. Ravi Varma, respondent No. 1 in Civil Appeal No. 1845 of 1968, was appointed as an Inspector in the Central Excise Collectorate in Madras on May 27, 1947 and was confirmed on April 7, 1956. Ganapathi Kini, respondent No. 1 in Civil Appeal No. 1846, was appointed as an Inspector in the Central Excise Collectorate in Madras on May 28, 1947. In view of the war service rendered by Ganapathi Kini, his service for purposes of seniority was computed with effect from October 10, 1946 and he was confirmed on April 7, 1956. Ganapathi Kini and Ravi Varma were shown at serial Nos. 115 and 141 in accordance with the length of service in seniority list of inspectors prepared in 1959. Subsequently on the directions of the Central Board of Revenue, contained in letter, dated October 19, 1962, a revised seniority list was prepared in 1963 by computing seniority from the date of confirmation. In the revised list Ganapathi Kini and Ravi Varma were shown at serial Nos. 149 and 150, junior to persons to whom they had been shown senior in the earlier seniority list. Ganapathi Kini and Ravi Varma thereupon filed petitions under Article 226 of the Constitution of India praying for quashing the revised seniority list prepared in 1963. The main ground taken in the writ petitions was that the seniority should be determined according to length of service in terms of

Office Memorandum, dated June 22, 1949 of the Ministry of Home Affairs. Impleaded in the writ petitions as respondents were the Union of India, the Central Board of Revenue and the Collector of Central Excise as also those inspectors of Central Excise who, according to the petitioners, were junior to them put who on account of being shown senior to the petitioners in the revised seniority list, had been appointed as Senior Grade Inspectors of Central Excise.

5. The above mentioned writ petitions were resisted by the appellants. The learned Judges of the Mysore High Court referred to the Memoranda, dated June 22, 1949 and December 22, 1959 and held that the altered rule embodied in the Memoranda, dated December 22, 1959 for the determination of seniority would be inapplicable to the persons appointed before June 22, 1949, like Ganapathi Kini. Argument was advanced on behalf of the appellants that on July 3, 1957, the Central Board of Revenue had again adopted the rule that the date of the confirmation should form the basis for determination of seniority. This argument did not find favour with the learned Judges and it was observed :

"But what is however clear is that in the case of a person like the petitioner who was appointed before June 22, 1949, the rule made by the Ministry of Home Affairs on that date was what constituted the basis for the determination of seniority and not the rule which was revived by the Central Board of Revenue on July 3, 1957."

Direction was accordingly issued that Ganapathi Kini's seniority should be determined on the basis of the formula contained in the Office Memorandum, dated June 22, 1949 and the revised seniority list be rectified accordingly.

6. In the petition filed by Ravi Varma the High Court made a short order wherein, after referring to the decision in the case of Ganapathi Kini, the learned Judges granted similar relief to Ravi Varma.

7. Suresh Kumar, respondent No. 1 and Tara Chand Jain, respondent No. 2 in Civil Appeal No. 50 of 1969, were appointed as Lower Division Clerks in the Medical Stores Depot., Karnal, under the Directorate General of Health Services on October 9, 1950, and November 26, 1951, respectively. Both of them were confirmed on March 31, 1960. In the seniority list which was prepared in accordance with Office Memorandum, dated June 22, 1949, Suresh Kumar and Tara Chand Jain, respondents, were shown at serial Nos. 32 and 34 in accordance with their length of service. Subsequently Memorandum, dated June 19, 1963, was received from the Directorate General of Health Services in which there was a reference to the Ministry of Home Affairs, Office Memorandum, dated December 22, 1959. It was stated in the Memorandum from the Directorate General of Health Services that scheduled castes and scheduled tribes candidates who were confirmed in reserved vacancies would rank senior to temporary, including quasi-permanent persons irrespective of their positions in the seniority list. A revised seniority list was thereafter prepared and a number of scheduled castes candidates who had been recruited later but had been confirmed earlier than Suresh Kumar and Tara Chand Jain were shown senior. Suresh Kumar and Tara Chand Jain were thus shown at serial Nos. 40 and 42 in the revised seniority list. Suresh Kumar and Tara Chand Jain thereafter filed petition under Articles 226 and 227 of the Constitution of India for quashing the instructions contained in the Memorandum, dated June 19, 1963, issued by the Directorate General of Health Services as well as the revised seniority list and other consequential reliefs. Impleaded as respondents in the petition were the Union of India, the Director General of Health Services, the Deputy Assistant Director General Medical Stores, as well as 10 other scheduled cast employees of the Medical Stores Depot., Karnal, who had been shown senior to the petitioners in the revised seniority list.

8. The above petitions were resisted by the appellants and were dismissed by the learned single Judge. On Letters Patent Appeal the judgment of the single Judge was reversed and it was held that Suresh Kumar and Tara Chand Jain having been appointed prior to December 22, 1959, were governed by the rule of seniority contained in the Office Memorandum, dated June 22, 1949, issued by the Ministry of Home Affairs. This position, in the opinion of the learned Judges, was not affected by the subsequent Office Memoranda issued by the Ministry of Home Affairs. So far as the Memorandum, dated June 19, 1963, issued by the Directorate General of Health Services was concerned, it was found to be not in consonance with the Office Memorandum issued by the Ministry of Home Affairs on June 22, 1949 and December 22, 1959. As such, the Memorandum issued by the Directorate General of Health Services, according to the learned Judges, could not affect the seniority of Suresh Kumar and Tara Chand Jain. In the result the revised seniority list was held to be invalid and the Union of India and two other appellants were directed to prepare a revised seniority list in accordance with the original seniority of Suresh Kumar and Tara Chand Jain.

9. The learned Solicitor General on behalf of the appellants has at the outset referred to Memoranda, dated June 22, 1949 and December 22, 1959, issued by the Ministry of Home Affairs and has argued that after the issue of the letter Memorandum the seniority of all Central Government employees should be determined by the date of their confirmation and not on the length of service. In this connection, we find that the migration of a large number of Government employees after the partition of the country from areas now forming part of Pakistan, resulted in a situation wherein the Government had to review the rules relating to seniority. As most of those displaced Government servants had been employed on temporary basis and as it was felt that they should be given some weightage in the matter of seniority on compassionate grounds, the rule was evolved that the seniority should be determined on the basis of the length of service in equivalent grades. The seniority of persons appointed on permanent basis or quasi-permanent basis before January 1, 1944, was, however, left undisturbed. Further, as it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of person appointed to Central Service. Office Memorandum, dated June 22, 1949, was consequently issued. The above principles were also extended to other category of Government employees, including those with war service.

10. The matter was reviewed thereafter in 1959. The Government then found that displaced Government servants had by and large been absorbed in the various Central services and their seniority had been fixed with reference to the previous service rendered by them. Same was found to be the position of other Government servants who had been given the benefit of the principles contained in Memorandum, dated June 22, 1949. As the objects underlying the instructions of June 22, 1949, had been achieved and it was no longer considered necessary to apply those instructions in preference to the normal principle for determination of seniority, it was decided that the seniority of Central Government employees would henceforth be determined in accordance with the general principles contained in Annexure to the Office Memorandum issued by the Ministry of Home Affairs on December 22, 1959. One of those principles was that permanent officers of each grade would be ranked senior to persons who were officiating in that grade. The effect of that, as submitted by the learned Solicitor General, was that the seniority was to be determined by the date of confirmation and not on the basis of length of service as was the rule contained in the Office Memorandum, dated June 22, 1949.

11. The Office Memorandum, dated December 22, 1959, however, expressly made it clear that the general principles embodied in the Annexure thereto were not to have retrospective effect. In order to put the matter beyond any plae of controversy, it was mentioned that 'hereafter the seniority of all

person appointed to the various Central Services after the date of these instructions should be determined in accordance with the General principles annexed hereto'. It is, therefore, manifest that except in certain cases with which we are not concerned, the Office Memorandum, dated December 22, 1959, and the provisions laid down in the Annexure thereto could not apply to persons appointed to the various Central Services before the date of that Memorandum.

12. It may also be mentioned that while dealing with the above Memorandum, this Court in the case of Mervyn Coutindo and Others v. Collector of Customs, Bombay and Others, [(1966) 3 SCR 600] observed that these principles were not to apply retrospectively but were given effect to from the date of their issue, subject to certain reservations with which we are not concerned.

13. It has next been argued by the learned Solicitor General that whatever might be the position in respect of the employees in other Central Services, so far as the clerks, supervisors and inspectors under the Central Board of Revenue were concerned, a decision was taken that for purposes of promotion, the permanent employees should have precedence before non-permanent employees. Our attention in his connection has been invited to letter, dated March 15, 1958, sent by the Central Board of Revenue to all Collectors of Central Excise. In this letter there was a reference to an earlier letter, dated July 3, 1957, from the Board and it was mentioned that the instructions contained in the earlier letter that for purposes of promotion from ministerial grade to inspectors' grade, permanent clerks would first be considered before considering persons who were non-permanent, should be followed in respect of promotions to other grades also. The Solicitor General accordingly contends that the direction contained in the Memorandum, dated December 22, 1959, that it could not apply to employees appointed before that date would not hold good in the case of clerks, supervisors and inspectors functioning under the Central Board of Revenue. It is, in our opinion, not necessary to go into this aspect of the matter because we find that the Central Board of Revenue as per letter, dated August 27, 1971, addressed to all Collectors of Central Excise, gave fresh instructions regarding the principles of seniority. In this letter there was a reference to the Office Memorandum, dated December 22, 1959, issued by the Ministry of Home Affairs and it was stated :

"In supersession of all previous orders on the subject, it has now been decided that in so far as the non-gazetted staff in the Central Excise, Customs and Narcotics Departments and other subordinate offices are concerned, the seniority of persons appointed to various posts and services after receipt of these orders should be regulated in accordance with the Ministry of Home Affairs O.Ms. referred to above."

14. It would follow from the above that so far as the non-gazetted staff in the Central Excise, Customs and Narcotics Departments and other subordinate offices of the Central Board of Revenue are concerned, the question of seniority would have to be decided in accordance with the Office Memorandum, dated October 19, 1959. As the said Office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum, there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Varma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with Office Memorandum, dated June 22, 1949, and not on the basis of the date of their confirmation.

15. In Civil Appeal No. 50 of 1969, the learned Solicitor General has referred to Office Memoranda, dated January 28, 1952, April 20, 1961 and March 27, 1963, issued by the Ministry of Home Affairs to show a departure from the rule of seniority for the benefit of members of scheduled

castes and scheduled tribes. Office Memorandum, dated January 28, 1952, makes provision for communal representations in services for candidates belonging to scheduled castes and scheduled tribes as also the Anglo-Indian community. The Memorandum gives a modal roster which should be applied in filling the vacancies. Perusal of the Memorandum shows that it relates only to recruitment and has nothing to do with the rule of seniority.

16. Office Memorandum, dated April 20, 1961, deals with the question of seniority of direct recruits who were confirmed in an order different from the original order of merit. According to the Memorandum, it often happens that scheduled caste or scheduled tribe candidate occupying a lower position in the merit list is appointed permanently to a reserved vacancy, while candidates above him in the merit list are not appointed at that time. If such candidates are appointed in the following year, they are not entitled to a higher seniority on the ground that in the previous year they had obtained a higher position in the merit list. It is plain that the above Office Memorandum did not deal with the question of seniority on the basis of length of service as contained in Office Memorandum, dated June 22, 1949, but with the question as to what would be the effect if a direct recruit scheduled caste or scheduled tribe candidate though occupying a lower position in the merit list, is confirmed earlier in a reserved vacancy. We are in the present case not concerned with any merit list nor with any question of seniority based on such a list. As such Office Memorandum, dated April 20, 1961, is also of not any material help to the appellants. It may be stated that the counsel for the appellants in the High Court conceded that the above Memorandum had no directed relevances in the present controversy.

17. The third Office Memorandum, dated March 27, 1963, referred to by the learned Solicitor General deals with the subject of maintenance of roster for giving effect to the reservations provided for scheduled castes and scheduled tribes in Central Government services. This Memorandum has a bearing only on the question of recruitment and provides no guidelines for determining seniority. We, thus, find that none of the three Offices Memoranda relied upon by the Solicitor General is of any material assistance to the appellants.

18. We may now advert to the Memorandum, dated June 19, 1963, issued by the Directorate General of Health Services. As mentioned earlier, it was after the receipt of this Memorandum that the seniority list of Class III employees of the Government Medical Stores Depot., Karnal, was revised and the seniority was determined on the basis of the date of confirmation and not on the basis of length of service. The above Memorandum from the Directorate General of Health Services expressly refers to the Office Memorandum, dated December 22, 1959, issued by the Ministry of Home Affairs and seeks implementation of that. It is no doubt true that a direction was given in the Memorandum of the Directorate General of Health Services that scheduled caste and scheduled tribe candidates confirmed in reserved vacancies should be ranked senior to temporary, including quasi-permanent persons, irrespective of their position in the seniority list, but such a direction went beyond the rule of seniority contained in the Office Memorandum, dated December 22, 1959, issued by the Ministry of Home Affairs in respect of employees appointed before that date. As mentioned earlier Office Memorandum, dated December 22, 1959, did not disturb the seniority of Central Government employees who had been appointed prior to the date of that Memorandum, except in certain cases with which we are not concerned. It is not disputed that according to the Government of India Allocation of Business Rules, 1961, general questions relating to recruitment, promotion and seniority in Central Services like the one with which we are concerned, have to be dealt with by the Ministry of Home Affairs. As Suresh Kumar and Tara Chand Jain, respondents, were appointed prior to December 22, 1959, their seniority was governed by the rule of length of service as contained in Office Memorandum, dated June 22, 1949, and not by the rule based upon date of

confirmation as contained in the Annexure to the Memorandum, dated December 22, 1959.

19. Reference was made by the learned Solicitor General to the case of Roshan Lal Tandon v. Union of India [(1968) 1 SCR 185], wherein it has been laid down that the Service rules may be framed and altered unilaterally by the Government. No occasion for invoking the above dictum arises in this case because the learned counsel for the contesting respondents have not questioned the right of the Government to frame and alter unilaterally the Service rules.

20. In the result, all the three appeals fail, and are dismissed with costs.

21. One hearing fee.

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